No. 80-2131

In the Supreme Court

OF THE

United States

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OCTOBER TERM, 1980

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
a corporation,
Appellant,

VS.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA,
Appellee,

CITY OF SALINAS,
Real Party in Interest.

MOTION TO AFFIRM OR DISMISS

JANICE E. KERR
HECTOR ANNINOS
ALVIN S. PAK
5066 State Building
San Francisco, CA 94102
(415) 557-2784
Attorneys for Appellee

BOWNE-PERNAU WALSH • 190 NINTH ST. • S.F., CA 94103 • (415) 864-2300

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Appellee (hereinafter, "the Commission") moves the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of the State of California, on the grounds that said judgment is based upon adequate state grounds and that the appeal does not present a substantial federal question.

I

OPINIONS BELOW

The opinions below are correctly stated in Appellant's (hereinafter, "Southern Pacific") Jurisdictional Statement.[1]

II

ARGUMENT

A. The Decisions Below Rest Upon Adequate State Grounds

It is important to note that the Commission decisions at bar involved rights and procedures created by state statutes, *viz.*, Public Utilities Code Sections 1201, et seq. (See Appendix G, Jur. St.) The interpretation and operation of those statutes is the exclusive responsibility of the California courts and this Commission. *Speiser v. Randall*, 357 U.S. 513, 523 n.7 (1957), *rehearing denied*, 358 U.S. 860 (1958); *Quong Ham Wah Co. v. Industrial Accident Commission*, 255 U.S. 445, 448 (1921); also, *Greyhound Lines, Inc. v. Public Utilities Commission*, 68 Cal.2d 406 (1968). The denial of review and rehearing by the state supreme court fully affirms that the Commission's interpretations of the dispositive provisions of the Public Utilities Code were proper in light of state law. *People v. Western Airlines, Inc.*, 42 Cal.2d 621, 630-631 (1954). The actions of the court below establish that Southern Pacific's claims respecting alleged violations of its rights to substantive and procedural due process are not legitimate.

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[1]References to the Jurisdictional Statement hereinafter made shall be abbreviated as "Jur. St.", followed by a page citation.

As to Southern Pacific's substantive due process claim, the Commission left the door open to a motion by Southern Pacific, in the event that the City of Salinas (Salinas) failed to diligently file its own condemnation action, requesting that the Commission proceed to adjudicate the just compensation question. (See Decision No. 91891, as modified by Decision No. 92299, Appendices D and E, Jur. St.) The record before the Commission demonstrates that Southern Pacific's rights to just compensation have been fully protected and preserved. Furthermore, Salinas continues to acknowledge its ultimate liability to Southern Pacific. No prejudice to Southern Pacific's property interests as protected by constitutional principles of substantive due process can be asserted in the light of these circumstances. All that has thus far been accomplished is the granting of authority to construct a railroad crossing with all of the trappings attendant to such authority. These acts must logically precede any action to fix just compensation since the fact of taking or damage of property may be precluded if authority to construct is denied. The sequence of the statutes here at bar fully support this result. See especially Public Utilities Code Section 1206, which presumes the approval of construction; *Great Northern Ry. Co. v. Superior Court*, 126 Cal.App. 575, 583, (1932); *Northwestern Pacific R.R. Co. v. Superior Court*, 34 Cal.2d 454, 458 (1949).

More importantly, Southern Pacific fails to allege that the pertinent statutes, Public Utilities Code Sections 1201, et seq., as a constitutional matter, impermissably allow damage to its property rights. To the contrary, Southern Pacific argues its disagreement with the Commission's

interpretation of those statutes, a disagreement with which the state court below was unimpressed. It is submitted that no proper federal question has been raised by Southern Pacific.

Turning to Southern Pacific's procedural due process allegations arising from the modifying language of Decision No. 91891, the Commission submits that Southern Pacific has been afforded a full "opportunity to be heard." It is important to keep in mind that the principal holding at issue is the Commission's determination that Salinas was accorded a right of entry as a necessary incident to the approval of the Davis Road construction project. With respect to that determination, Southern Pacific filed an extensive petition for rehearing on July 1, 1980, and a reply to the subsequent brief of Salinas on July 25, 1980. The issues addressed therein were purely legal; in those pleadings Southern Pacific never alleged that the convention of a hearing was necessary for the taking of additional factual evidence. Thus, no apparent purpose would have been served by the granting of a rehearing. Procedural due process does not require idle acts of a tribunal. *City of Los Angeles v. Public Utilities Commission,* 15 Cal.3d 680, 703 (1975).

B. The Denial Of Southern Pacific's Petitions For Writ Of Review And Rehearing By the Supreme Court Of The State of California Does Not Raise Any Federal Question

Southern Pacific once again raises the question of the adequacy of judicial review afforded to it under California

statute.[2] Having been thrice denied a review by the Supreme Court of the State of California with respect to Application No. 59126, Southern Pacific attempts to characterize that honorable court's opinion in *Consumers Lobby Against Monopolies v. Public Utilities Commission*, 25 Cal. 3d 891 (1979), as the sole source of its frustrations.

Reduced to their basic element, Southern Pacific's contentions represent nothing more than a disagreement with the California Supreme Court as to the merit of the petitions Southern Pacific presented to that court. Southern Pacific fails to heed the clear message of the minute orders set forth in Appendices A and B, Jur. St., *viz.*, that its petitions failed to set forth sufficient grounds for the granting of review. Implicit in that message is the finding that the Commission's orders there challenged were in compliance with apposite state statutes and regulatory law.[3] *People v. Western Airlines, Inc.*, 42 Cal.2d 621 (1954), *Consumers Lobby, supra* at 901.[4] Southern Pacific now appears before this Court having been unable to persuade the tribunals below that its claims are compelling or its cause just; however, the fact that a litigant has suffered defeat hardly proves a deprivation of constitutional rights or the caprice of the tribunal whose decision has adversely affected the litigant. See *Napa Valley Electric Co. v. Railroad Com-*

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[2]This identical issue was raised by Southern Pacific in a related case, No. 80-932, described in footnote 7, Jur. St. 4.

[3]See Argument "A", *supra*.

[4]Inasmuch as none of the procedural defects discussed in the *Consumers Lobby* opinion, 25 Cal.3d at 902-905, are pertinent to the instant case, denial of Southern Pacific's petition could only have been for want of substantive merit.

mission, 251 U.S. 367, 372-373 (1920); *Southern California Edison Co. v. Railroad Commission*, 6 Cal.2d 737 (1936).

Nor does the *Consumers Lobby* opinion, of which Southern Pacific vehemently disapproves, give rise to any cause of action sounding in federal constitutional law. Southern Pacific's contention that *Consumers Lobby* cheats litigants of due process and adequate judicial review is the product of a failure to understand the holding which it now attacks.

Consumers Lobby did not significantly alter the nature of the review process described at Sections 1756, et seq. of the Public Utilities Code. The court's holding in that case continued the long-standing rule that denials of petitions for writ of review are to be deemed a decision on the merits. *Consumers Lobby, supra*, at 901. Contrary to the arguments of Southern Pacific, review does not fail adequacy or meaning simply because the court has ruled that no *stare decisis* effect attaches to a denial of a writ of review; that third parties, some of whom may be as yet unborn, suffer no ill effect from the denial raises no constitutional defect. As the state court noted, its decision may have the effect of encouraging petitions for review:

> "[M]embers of the public who have potentially meritorious petitions for review to present to this court [might otherwise] be dissuaded from doing so by the mere fact that we declined to take an earlier case allegedly raising the same question." *Id.*, at 905.

The power to determine the effect which a court's rulings shall have clearly rests within the sound discretion of the court rendering that ruling. *Consumers Lobby* is consistent with the apposite statutory and constitutional principles

of judicial review. Southern Pacific's plea for consideration of the "no *stare decisis*" rule is without legal basis and should be denied.

III

CONCLUSION

Southern Pacific fails to raise any issue not adequately decided below on state grounds or presenting a substantial federal question. Wherefore, the Commission respectfully submits that the instant appeal should be dismissed or, alternatively, the judgment below should be affirmed.

Dated: July 16, 1981
San Francisco, California

Respectfully submitted,
JANICE E. KERR
HECTOR ANNINOS
ALVIN S. PAK
Attorneys for Appellee